IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5272 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJESHKUMAR GUNVAT PANDYA

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 5272 of 2002

MRS SANGEETA N PAHWA for Petitioner No. 1

MR RV DESAI, AGP for Respondent No. 1

NANAVATY ADVOCATES for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/09/2002

ORAL JUDGEMENT

Leave to amend.

Rule. In the facts and circumstances of the case

and with the consent of the learned counsel for the parties, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the interim order dated 13.3.1998 (Annexure "A") passed by the Collector, Junagadh under Section 258(1) of the Gujarat Municipalities Act, 1963 ("the Act" for short) and the final order dated 5/13.8.1998 (Annexure "E") of the Collector, Junagadh finally disposing of the said proceedings.

3. The petitioner was appointed as a driver by the President of the Junagadh Municipality. Thereafter the petitioner was promoted as the Checking Inspector on 17.12.1997. The said order was passed by the President of the Municipality, subject to the approval by the general body of the Municipality. On 15.3.1998, the general body of the Municipality ratified the promotion of the petitioner as Checking Inspector. The Collector stayed the said resolution of the Municipality. The petitioner thereupon moved the Labour Court and the Labour Court granted ex-parte ad-interim injunction. Ultimately, the Labour Court vacated the said ex-parte ad-interim injunction on 1.4.2002. During pendency of the matter before the Labour Court, the Collector disposed of the proceedings on 13.8.1998. It is the said order dated 13.8.1998 which is under challenge in this petition.

4. It is not necessary to set out all the facts or the contentions in detail as the petition is required to be disposed of on the short ground that the resolution of the Municipality which the Collector set aside as well as the promotion order which was ratified by the general body of the Junagadh Municipality were in favour of the petitioner and, therefore, before finally setting aside the resolution or the promotion order, the petitioner was required to be given an opportunity of being heard. Admittedly, the petitioner was not given any notice of such proceedings. Hence, on this short ground alone, the petition deserves to be allowed.

5. The petition is accordingly allowed. The orders at Annexures A and E are set aside. The Collector, Junagadh shall hear de novo the proceedings under Section 258(1) of the Act in respect of the resolution dated 15.3.1998 of the Junagadh Municipality regarding agenda item No. 114 about the petitioner's promotion as Checking Inspector after giving all the concerned

including the petitioner, the municipality, original applicant-Abdul Majid Soratia and the employees likely to be affected by the decision, an opportunity of being heard. The Collector decision, an opportunity of being heard, the Collector shall take the final decision as expeditiously as possible and in any case by 31.12.2002.

Rule is made absolute to the above extent with no order as to costs.

Writ of this Court shall be sent down to the respondents forthwith in order to enable them to comply with the direction given hereinabove.

(M.S. Shah, J.)

sundar/-